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IN THE

Supreme Court of the United States

IN BANKRUPTCY.

October Term, 1902. No. 100.

EDWARD D. PAGE, BANKRUPT,
Appellant,

vs.

CHARLES W. EDMUNDS, TRUSTEE,
Appellee.

Appeal from the United States Circuit Court of Appeals for the Third Circuit.

BRIEF OF APPELLEE.

ARGUMENT.

The Bankrupt Act of 1898 declares what title of the bankrupt shall vest in the Trustee, viz.:

"The title of the Bankrupt as of the date he was adjudged a bankrupt, except in so far as it is property which is exempt, to all * * *

"(3) Powers which he might have exercised for his own benefit, * * *

"(5) Property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process." Section 70.

The Constitution of the Philadelphia Stock Exchange in Article II, Section 4, specifically provides that "Any member wishing to sell his membership shall have the right to do so." Record, p. 5.

The appellee therefore contends, and the Circuit Court of Appeals below has sustained the contention, that this right of the appellant to sell his membership passed to the Trustee as "property which he could by any means have transferred;" as "a power which he might have exercised for his own benefit."

The Appellant denies these conclusions in an argument which may be conveniently summarized as follows:

First. That the policy and scope of the Bankrupt Law is confined to securing to a bankrupt's creditors an equitable distribution of the property they could have secured for themselves by judicial process, by virtue of the execution laws of the various States in which it may be situated.

Second. That this Court must accept the definition of property laid down by the Supreme Court of Pennsylvania, which denies that a seat in the Exchange is property.

Third. That the Exemption Clause in the Act includes within its scope property which is not liable to execution under the laws of the several States as well as that property which is ordinarily liable to execution but specifically exempted by State Law.

Let us consider each of these propositions separately, first casting them into a negative form, to correspond with what the appellee believes to be a correct statement of the law.

FIRST.

The policy and scope of the Bankrupt Law is not confined merely to securing to the bankrupt's creditors an equitable distribution of the property they could have secured for themselves by judicial process by virtue of the execution laws of the various States in which the property may be situated.

It is difficult to see upon what ground an argument can be based that the scope of the present bankrupt law is confined to property which may be levied upon and sold under judicial process. The language of the Act is wholly opposed to such a conclusion; for not only is property which might have been levied upon and sold under judicial process vested in the trustee by section 5, but by the same section, also property which prior to the filing of the petition he could by any means have transferred, while section 3 includes powers which he might have exercised for his own benefit. If the appellant's right of membership in the Philadelphia Stock Exchange does not come within the sweeping provisions of this section 70, it is difficult to discover what form of phraseology the English language is capable of which could carry this and similar forms of property.

A member pays a large sum of money for his

interest in the co-partnership, and this interest by the specific words of the Constitution "he has a right to sell." If he die, his membership must be sold within a year, and the proceeds are payable to his legal representatives. If he become insolvent, he must settle with his creditors within six months, or his membership must be sold within a year. If his membership be terminated by certain fraudulent acts, his membership is forfeited and must be sold, and the proceeds paid to himself, his heirs or assigns. Record, pp. 5 and 6. This enumeration of the rights of the member, secured to him by the Constitution of the Exchange, is further supplemented by the testimony of the bankrupt himself before the referee.

"That seats are always saleable, that the last price paid of which he heard was $8500. That he could sell his seat at any time to any one who wanted to buy it; that the buyer takes it with the understanding that he will be elected a member; otherwise it is no sale. That he could sell his seat without the approval and concurrence of the other members; that he did not include the seat as an asset in his schedules, because from his understanding of the matter he did not consider it an asset." Record, p. 4.

It is true that the Governing Committee may decline to permit a sale or transfer of the membership so long as the member remains indebted to the Exchange (unless the member is insolvent and the sale is made for the purpose of realizing funds for the payment of his creditors), but this is a common provision of the Corporation Law of many States, and no one has supposed

that a member's interest in an ordinary trading partnership is not property in every sense, even if his legal representatives have no right to participate in the management of the business after his membership is terminated by any of the causes which terminate a partnership, such as death, insanity, bankruptcy or a sale. Taylor *v.* Field, 4 Vesey 369; Note to Young *v.* Keighly, 15 Vesey 559; Deal *v.* Bogue, 20 P. S. R. 228.

The bankrupt laws which Congress was given authority to make and which have been made in pursuance of that authority, are not nor have similar laws ever been, as appellant claims, merely a species of general execution issued in favor of all the creditors of a bankrupt, reaching all his property subject to levy, and applying to the payment of all his debts according to their respective priorities. On the contrary, the history and development of insolvency legislation, covering as they do a period of nearly two thousand years, clearly show that they were designed for and confined to securing a benefit to the debtor himself by relieving him from the serious penalties imposed for so many centuries upon those who failed to pay their debts. The principle, which was the foundation of all the legislation upon that subject during that long period, was the very simple one that if a debtor was honest and was willing to pay his creditors to the full measure of his ability, he had done all that could be fairly asked of him, and should not be subjected to punitive or vindictive measures. These laws may be said to have begun at Rome with the reaction in the law of execution against the extreme

severity of the early Roman Law of the Twelve Tables, and by the earlier forms of them a debtor who could swear that his property was insufficient to pay his debts was relieved from all further liability therefor; a revolutionary concession obtained by the victorious plebeians. Later, however, the earliest form of that legislation, which has since culminated in the Insolvency and Bankruptcy Acts of modern civil law, appeared in the Lex Poetelia, 326 B. C., which enabled a debtor who could swear to being worth as much as he owed to save his freedom by resigning all of his property. This idea of a complete surrender of all of the debtor's property, called the Cessio Bonorum, became the basis of Julian law for the relief of insolvent debtors, formulated by Julius Cæsar, and extended by the emperors to the Provinces. By this law, a debtor was bound to surrender the whole of his estate, excepting only his wearing apparel, in order to secure immunity from being dragged to jail: Omni quoque corporali cruciatu semoto. His debt was not discharged, nor were future acquisitions exempted from the obligations of his old debts (except they happened to be only a modicum sufficient for his living expenses). This sad and miserable refuge of the unfortunate, flebile et miserabilium auxilium as the Pandects put it, merely relieved him of corporal punishment.

The Cessio Bonorum was adopted in all those countries of Europe which followed the civil law as the basis of their jurisprudence, and at the beginning of the last century it formed the basis of the codes of Conti-

nental Europe. "It may be laid down," says Kent, writing early in the last century, "as the law of Germany, France, Holland, Scotland and England, that insolvent laws are not more extensive in their operation than the Cessio Bonorum, providing merely for exemption of the person." Kent's Comm. Vol. I, p. 423.

In England, as Magna Charta had prohibited imprisonment for debt, the necessity for insolvency laws did not arise until after a series of statutes, culminating in the reign of Henry VII, had introduced imprisonment for debt as a feature of English jurisprudence. The rigorous application of this penal legislation developed insolvency laws in England, which were borrowed, as Blackstone pointed out, from Continental Jurisprudence. Blackstone, vol. 2, p. 472, They may be said to have originated in the Proclamation of Queen Elizabeth and were continued upon the same footing by the first two princes of the Stuart line, assuming the force of law in the first Parliament which was held after the death of Charles I. After the restoration they became common, but the Insolvent Act of 23rd Charles II, chap. XX A. D. 1670, has remained substantially the model of all subsequent legislation both in England and this country. No better way of discovering the scope and purpose of this legislation can be found than by an examination of the preamble to these successive statutes, for as Burgess in his book on Insolvency correctly says: In the history of early times the great guide to the knowledge of legal and constitutional matters is to be found in the preambles in the Acts of Parliament.

Let us notice in passing, the phraseology of some of these acts.

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The Commission issued by James the First on November 11, 1618, after reciting the Proclamation of Elizabeth provides that:

Whereas * for that by colour of the said commission which was intended for the charitable relief of the poor, miserable and distressed persons, sundry refractory and obstinate debtors which rather wanted will than means to satisfy their just debts took occasion to molest and trouble their creditors, we * have hitherto forborne the renewing of the said commission * * so it hath been found by experience that for want of that or some other like charitable course for the relief of such as are truly and indeed poor, distressed and miserable and want means to satisfy their creditors, have been an occasion to pester and fill our prisons with the bodies of those persons whose imprisonment in no way avail their creditors &c. &c. * Know Ye therefore that we * * constitute and appoint you to be our commissioners * * to receive the supplications and complaints of the said distressed prisoners and by all lawful ways and means to inform yourselves as well of the due, debt, damage and duty for which such action, suit, complaint, judgment or execution is or shall be prosecuted, obtained or gotten, as of the certain estate and hability of the prisoners how to pay and discharge the same, &c. * * and we do hereby strictly charge and command you and every of you in all your proceedings by virtue of this our commission you be very circumspect and careful to try, and find out such wilful and obstinate persons and in no wise suffer them or any of them to partake of our said grace or mercy, which we hereby intend unto them that are and shall be willing with their whole estate bona fide and without fraud so far as it will extend to satisfy their just debts and damages.

The preamble of the Act of Charles II is as follows:

"For as much as very many persons now detained in prison are miserably impoverished, either by reason of the late unhappy times, the sad and dreadful fire, their own misfortunes, or otherwise *so as they are totally disabled to give any satisfaction to their creditors,* and so become, without advantage to any, a charge and burden to the kingdom," etc. 23 Chares II, Chap. 20 (1670).

The Act of Queen Anne has this significant title: "An Act for the relief of insolvent debtors by obliging their creditors to *accept the utmost satisfaction that they are capable to make* and restoring them to their liberty." 10 Anne, Chap. 20 (1711).

Almost simultaneously with this English legislation, February 14, 1729, the Legislature of Pennsylvania passed an Insolvent Law for Pennsylvania, which is expressly stated to be "For the relief of such prisoners who *shall be willing to satisfy their creditors as far as they are able*" (1 Smith's Laws, p. 181).

This Act remained on the Statute Books of Pennsylvania until long after the adoption of the Federal Constitution.

The Preamble of the Insolvent Act of George II, which followed, reads thus:

"Whereas many persons by losses and other misfortunes are rendered incapable of paying their whole debts, and *though they are willing to make the utmost satisfaction they can,* are nevertheless detained in prison by their creditors, and whereas such unhappy debtors have always been deemed the proper subjects of publick compassion, and by several acts of Parliament have been

discharged for the relief therefor of insolvent prisoners who shall faithfully discover upon oath and deliver up and assign all their effects and estates whatsoever for the benefit of their creditors, etc., Be it enacted." 21 George II, Chap. 31 (1748.)

Other Insolvent Acts followed with similar preambles and titles, as for example:

23 George II, Cap. 13 (1755); 1 George III, Chap. 17 (1760); 9 George III, Chap. 26 (1769); 12 George III, Chap. 23 (1772); 18 George III, Chap. 52 (1778), which was the last prior to the adoption of the Federal Constitution.

It will thus be seen that the whole purpose of this legislation was the relief of the honest debtor, and the test of his honesty was his willingness to make a complete surrender of all the means of payment at his command.

It is not necessary for our present purpose to discriminate between Insolvency Laws in general and that special form of them adapted to a certain class of persons who in the first Statute on the subject, 34th Henry VIII, are entitled "such persons as do make bankrupt." The purpose of this Statute and of those which followed was to permit creditors of traders under certain circumstances to proceed against them adversely, and to obtain the benefits of a distribution of the bankrupt's assets, such as the creditors of an ordinary insolvent obtained by the voluntary action of the debtor under the Insolvent Laws.

While these Acts conferred great privileges and advantages on those insolvents who submitted to their terms, the severest penalties were imposed upon those who failed to secure their discharge. But the Cessio Bonorum still remained the foundation of these laws as of all the other Insolvent Laws, and the complete discharge of the debtor from future liability for the payment of existing debts, was the privilege offered only to those who complied with its terms.

The distinction between them has been abolished both in England and in this country. In England in 1861 by the statute 24-25 Victoria c. 174, and in this country by all of the bankruptcy Acts passed since and including 1841. That which Chief Justice MARSHALL predicted in Sturgis *v.* Crowninshield, 4 Wheaton 122 has come to pass, and one Act now embodies the features of them all. The voluntary Cessio Bonorum by the debtor of all of his property as well as the forced surrender at the instance of his creditors, are both followed by the same procedure and lead to the same result. It was never, and is not now a question as to what property might have been seized by the creditor through other judicial processes. Unless the debtor was, and is willing to make satisfaction of his debts to the full extent of his ability, he is denied by the very terms of the Act the benefits that it offered. The only justification for his release from imprisonment in the earlier days and for his entire discharge from all future liability for existing debts, under the present Act, is that given in the Statute of 21st Geo. II, chap. 31, which we have already quoted, that "they are rendered inca-

pable of paying their whole debt, though they are willing to make the utmost satisfaction they can."

The bankrupt in the present case has not been forced by his creditors to invoke the privileges of this act: He is a voluntary petitioner asking the Court to relieve him of his lawful debts; and he cannot truthfully claim to be willing to make the utmost satisfaction he can so long as he declines to avail himself of his right to sell his seat in the Exchange and appropriate the large sum of money it will produce to the payment of his lawful debts. It is true that by the law of Pennsylvania a seat in the Philadelphia Stock Exchange cannot be levied upon and sold by adverse judicial process, but this is due to defects in the execution laws of Pennsylvania which have not kept pace with the development of trade and commerce, but still leave beyond their scope certain forms of property which at Common Law were not liable to execution. Nevertheless even in Pennsylvania this exemption from liability to execution appears not to extend to a voluntary assignment for the benefit of creditors nor to an assignment under the insolvent laws of the State. As far back as 1823 GIBSON, J., in North *v.* Turner, 9 S. & R. 244, said that it could not be doubted that a right to bring an action of Tort for damages de bonis asportatis was assignable and "would pass by a commission in bankruptcy," although such a right could not be reached by any existing judicial process ad invitum. So also in Pennsylvania a man's right, title and interest in a patent could be assigned voluntarily, but could not be reached by adversary process either at law or in Equity.

Harrington *v.* Cambridge, 14 W. N. C. 456; Bakewell & Kerr *v.* Keller, 11 W. N. C. 300.

Furthermore in Blackburne's Appeal, 39 P. S. R. 160, the Supreme Court held that the exemption allowed to debtors by the Act of April 9, 1849, called in Pennsylvania the Exemption Law, passed to a voluntary Assignee for the benefit of creditors unless expressly reserved in the Deed of Assignment.

The Court below was quite right therefore in asserting that the two Pennsylvania cases cited by the Appellant (Pancoast *v.* Gowen, 93 Pa. 66, and Thompson *v.* Adams, 93 Pa. 61) were not authority for the unqualified dictum that a seat in the Exchange was not property in the eye of the law.

In the former case the Supreme Court of Pennsylvania in the opinion merely said: "A seat in the Board of Brokers *is not property subject to execution in any form.* It is a mere personal privilege, perhaps more accurately a license, to buy and sell at the meetings of the Board." In the latter case decided at the same time by the same Court the language used is substantially the same: "The seat is not property in the eye of the law. It could not be seized in execution for the debts of the members."

It is obvious in both cases that the Court merely meant to say that a seat in the Exchange was not property in the eye of the Execution Laws of the State; that in this respect it was like a patent right which, as we have already said could neither be reached at law or in equity by creditors; although property which even in Pennsylvania the Courts of Equity would enforce an agreement to convey. Hepworth *v.* Henshall, 153 P. S. R. 592.

SECOND.

This Court is not bound to accept the definition of property laid down by the Supreme Court of Pennsylvania.

The United States has jurisdiction under the Constitution of two distinct lines of cases: Those arising under the Constitution, laws and treaties of the United States, and those depending upon citizenship of the parties. (Constitution, Article III, Sec. 2.)

The creation by Congress, in pursuance of this power, of Circuit Courts, sitting within the States, authorized to exercise this latter jurisdiction by taking original cognizance concurrent with the courts of the several States, of all suits of a civil nature at common law, established two distinct tribunals within the same territory, with co-extensive jurisdiction. Political considerations required that the Federal power brought into action amidst sovereignties already organized and established should not by its inherent jurisdiction supplant local customs and usage, and substitute in their place the common law of England in its primitive plenitude and vigour. Expediency required the adoption for the government of the Federal Courts, of the same law and practice that prevailed in the respective States, to prevent injurious clashings of jurisdictions and practices. Accordingly Congress was careful to direct that "the laws of the several States except where the Constitution, treaties or statutes of the United States shall otherwise require or provide shall be regarded as rules of decision

in trials at common law in cases where they apply." Judiciary Act, 24 September, 1789, Section 34. But this limitation imposed upon the Federal Courts by Section 34 of the Judiciary Act does not apply to those cases in which the jurisdiction arises out of the cause of action, but solely to cases where it arises by reason of the citizenship of the parties. Schreiber *v.* Sharpless, 17 Fed. Rep., 589; In re Burrus, 136 W. S. R,. 648. Even in such cases the section is strictly limited in its application to laws unmistakably local, such as the statutes of the State, and to rights and titles to things having a permanent locality in the State, such as real estate and other matters immovable and intra-territorial in their nature and character. The section was not designed to apply to questions of a more general nature, as for example, the construction of ordinary contracts and other written instruments or to questions of general commercial law, where the Federal Courts are bound to exercise their own judgment in arriving at what is the true exposition of the contract. Swift *v.* Tyson, 16 Peters. It is unnecessary to discuss this question further, or to cite cases in support of a position so well established. We have here to deal with the interpretation of a statute passed in pursuance of a power conferred upon Congress by the Constitution of the United States and neither the interpretation of the constitutional grant of power, nor the laws passed by Congress in pursuance of that grant of power can be subjected to the interpretation of the different States of the Union.

One might as well claim that this Court should

accept the interpretation of the word "commerce" as defined by State laws, in the analogous grant of power to Congress, to regulate commerce between States, with which the present power, as pointed out by Madison in the forty-second number of the "Federalist," is so intimately connected.

THIRD.

The exemption clause of the Bankrupt Act does not include within its scope property which is incapable of being levied upon and sold under judicial process in the various states, but only such property as is specifically exempted therefrom.

The sections in the Act referring to the exemptions allowed the bankrupt are the following:

SECTION 6. This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

SECTION 70. The Trustee of the estate of a bankrupt * * * * shall be vested by operation of law with the title of the bankrupt as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempted, to all &c.

SECTION 67 (a). * * * * property of the debtor conveyed, transferred, assigned or encumbered as aforesaid

shall, if he be adjudged a bankrupt and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee.

These three clauses upon which the appellant places so much reliance in support of his views illustrate and confirm what we have already said above.

If nothing passed to the Trustee as appellant contends, in the principal part of his argument, except property which might have been the subject of judicial execution by the laws of the several States, then no exemption clause was necessary, since nothing passed to the Trustee which required an exemption.

The only conclusion to be drawn from these clauses seems to be: that as there passed to the trustee every form of property which had a pecuniary value or could be made to have one by a word from the debtor himself, it became indispensable to add an exemption clause if anything was to be withdrawn from the sweeping provisions of Section 70.

There seems to be nothing in these clauses to justify the appellant's view that they include within their scope not merely that property of a debtor which is exempted by specific statutes such as exist in every State, and commonly called exemption laws, but also such property as has never been capable of being taken in execution for the payment of his debts under any State form of judicial process. Although it is never wise or safe to base our interpretation of a statute upon the grammatical precision of the language used, yet in the present case it is at least significant that the

language employed, "the exemptions which are prescribed by the State law," is the natural and appropriate mode of expression if the Act intended to refer to those statutes which exempt in special cases property otherwise and usually liable to execution. The word "exemption," like the word "exception," indicates a general rule from the operation of which the subjects mentioned in the exemption or exception are withdrawn, and seems the only possible language by which the framers of the Act could refer specifically to those laws prescribed in various States of the Union (commonly called "Exemption Laws"), which under certain circumstances and for certain purposes, exempt property which otherwise is liable to execution. If, on the other hand, the intention of the framers of the Act was to include in the exemption to be allowed to the debtor such property as was never liable to execution under any circumstances, they would scarcely have employed so clumsy a locution, for the idea could have been more naturally and appropriately expressed in a variety of different ways, as for example: "This Act shall not affect the allowance to the bankrupt of property, either not liable to execution or specifically exempt therefrom by the laws in force in the State in which they have their domicile." Had such language been used the inconsistency between the Exemption clause thus defined and Section 70 would have been at once apparent. There is, however, a more conclusive objection than this to such an interpretation of the Exemption clauses of the Act.

By the very terms of the Act itself the law of the

debtor's domicile is to determine the scope of the exemption, and upon this point the law of Pennsylvania cannot admit of dispute.

By the Act of April 9, 1849, P. L., 533, Sec. 1, it is expressly enacted:

"In lieu of the property now exempt by law from levy and sale on execution issued upon any judgment obtained upon contract and distress for rent property to the value of $300, exclusive of all wearing apparel of the defendant and his family and all bibles and school books in use in the family (which shall remain exempted as heretofore) AND NO MORE owned by or in possession of any debtor, shall be exempt from levy and sale on execution or by distress for rent.

"In referring to this act in Emerson *v.* Smith (51 Penna., 93), the Court says: "By the exemption law property to the value of $300 and no more shall be exempt" and later in McCarthy's Appeal (68 P. S. R., 217) speaks of the same Act as "The Act of April 9, 1849, commonly called the 'Exemption Law.'"

It will thus be seen that whether we interpret the clause according to the natural and simple meaning of the language or according to the statute law of Pennsylvania, and the interpretation of that law by the Supreme Court of the State, the conclusion is the same: That in Pennsylvania the only property which does not pass to a trustee is that small sum in money of $300, with a few additional personal articles covered by the Statute commonly and judicially known as the "Exemption Law of Pennsylvania."

None of the cases cited by the appellant is an authority for the proposition that the exemption is wider

than this; they are all uniform and consistent in denying that an exemption clause in a bankrupt act destroys the uniformity required by the Constitution, so long as it does not go beyond permitting the debtor to retain what could not have been taken from him by any existing judicial process in the various States.

But no question arose in any of them as to the scope of the actual exemption clause before the Court. Indeed, in the case of Nichols, Assignee *v.* Eaton (91 U. S. R., 726), to which appellant refers, it is clear that Mr. Justice MILLER held this view of the exemption law. "It is believed," said he, "that every State in the Union has passed statutes by which a part of the property of the debtor is exempt from seizure or execution or other process of the Court, in short is not liable to the payment of his debts," and the same view is apparent in the opinions of the Court in the other cases cited by the appellants. In Pennsylvania, as we have seen, the exemption is definitely fixed by the Act of 1849, to which we have referred, and the earlier Act of June 16, 1836, to which the appellant refers, is obviously governed by the Act of 1849.

The analogy between a seat in the Stock Exchange and a spendthrift trust is unreal and misleading. In the few States like Pennsylvania which recognize the validity of such trusts they are sustained wholly upon the ground that it is a right of property in the creator of a trust to do what he will with his own property, and either by will or deed to limit it to such persons and

upon such terms as he sees fit, and that such limitations and conditions will be strictly observed by the Courts, unless prohibited by positive law. For this reason, if the owner of property chooses to so settle it that no income shall belong or be paid to the beneficiary until it is actually earned and received, or that his right to receive it shall depend upon the discretion of a third person or shall be wholly forfeited under certain circumstances, in all of these cases the terms of the settlement will be faithfully carried out according to the intentions of the giver of the property. But these cases are confined, as we have said, to settlements made upon a beneficiary by third persons, and do not refer to attempted settlements made for his own benefit by himself; on the contrary, the decisions establish that a spendthrift trust may not be made by a beneficiary for himself, or rather if so made may be avoided at the instances of his creditors. Mackason's Appeal, 42 P. S. R., 330. But even in the present case, if this seat had been a voluntary gift by the other members of the Exchange to the bankrupt and if he had not paid the full equivalent in money, yet the only evidence of the wishes of the other members of the Exchange is that obtained from the Constitution of the Exchange itself, and by this Constitution, as we have already shown, the member has a right to sell his membership if he wishes to, and must sell it within a year if insolvent and unable to meet his debts.

There is no force in the appellant's objection that the Court cannot force a purchaser of the seat into membership in the Exchange against the wishes of the

other members. This is conceded at once—no one for a moment has questioned it, but we do contend that the Court has the same power over this member's right to sell his membership as it has over property of the bankrupt in a foreign country. That is to say, the power to force the bankrupt to make the same effort to realize upon his membership for the benefit of his creditors as he could and would make for his own benefit if he chose to exert it; and upon his refusal to do this, to punish him, at least by refusing his discharge. Should the members of the Stock Exchange decline to admit to membership a purchaser to whom the bankrupt sold his seat merely because sold by him in obedience to a decree of this Court, it would be time enough to consider whether that is a right which these members have reserved to themselves in their Constitution. In view of the specific requirement of the Constitution of the Exchange that an insolvent's seat shall be sold within a year for the purpose of liquidating his indebtedness, it is scarcely probable that any objection to a suitable purchaser would ever be raised.

It has not seemed necessary to comment upon the cases cited by the appellant in his brief. All of them, it is believed, with one exception, are consistent with and illustrative of the principles which have been discussed above; and In Re. Sutherland which seems opposed may perhaps be reconciled with the others in the manner pointed out by CHOATE, J., In Re. Ketchum.

In the present case the United States Circuit Court of Appeals founded its judgment upon two cases decided

by this Court: Hyde *v.* Wood, 94 U. S. R. 523, and Sparhawk *v.* Yerkes, 142 U. S. R. 1. It is respectfully submitted that these two cases are decisive.

HENRY LA BARRE JAYNE,
HENRY R. EDMUNDS,
Of Counsel with Appellee.